ORIGINAL
DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
MAR 8 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Petition for Expedited Rulemaking to	)	
Develop a National Framework to Detect and	)	
Deter Backsliding to Ensure Continued Bell	)	RM-9474
Operating Compliance with Section 271 of	)	
the Communications Act Once In-region	)	
InterLATA Relief Is Obtained	)	

COMMENTS OF MCI WORLDCOM, INC.

Jerome L. Epstein
JENNER & BLOCK
601 13th Street, N.W.
Washington, D.C. 20005
(202) 639-6000

Keith L. Seat
Karen T. Reidy
MCI WORLDCOM, INC.
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 872-1600

March 8, 1999

No. of Copies rec'd 0+4
List A B C D E

EXECUTIVE SUMMARY

Petitioner Allegiance Telecom, Inc. ("Allegiance" or "petitioner") encourages the Commission to conduct a rulemaking to ensure that adequate standards and rules are in place to prevent "backsliding" once Bell Operating Company ("BOC") applications to enter in-region interLATA service are granted pursuant to section 271, but the stakes are actually much higher. It remains an open question whether widespread local competition for both residential and business customers is possible at all, let alone sustainable. Performance requirements are needed not only to prevent degraded service if and when local markets are opened to competition, but to ensure that new entrants have the ability to effectively compete in the local marketplace in the first instance.

MCI WorldCom, Inc. ("MCI WorldCom") agrees with petitioner that the Commission should establish rules providing comprehensive performance measures, objective performance standards, and effective enforcement mechanisms to discourage discrimination and inadequate service by BOCs. Only such action will help ensure that, prior to granting a section 271 application for any state, local competition is fully and irreversibly established for the benefit of both residential and business customers. Local competition will most certainly fail in the absence of performance requirements to deter BOCs from acting on their incentives to retain customers by discriminating against competing carriers. These requirements must be implemented immediately to permit local competition to begin to develop, in addition to preventing backsliding if open markets are eventually achieved.

Neither performance requirements nor guidance on what steps a BOC must take to obtain section 271 authorization is a new issue for the Commission. Both the Commission and the

Department of Justice ("DOJ") have repeatedly called for performance measures, standards and remedies to ensure that BOCs will provide reasonable and nondiscriminatory service to competitors. Although the Commission has provided some specific guidance on the type of performance data needed to gain section 271 approval, it has thus far made only general statements about the importance of performance standards and effective remedies. Now that the Commission's jurisdiction over local competition issues has been reaffirmed by the Supreme Court, the Commission should provide more specific rules concerning the performance standards and remedies needed to open local markets to competition and ensure that these markets remain open. Only the certainty of strict, self-executing remedies for violation of specific performance standards will provide a check on the BOCs' -- and other incumbent local exchange carriers' ("ILECs"') -- incentives and ability to provide poor service to competitive local exchange companies ("CLECs").

The Commission should expeditiously issue a notice to supplement the record in its prior rulemaking on performance measures, CC Docket Number 98-56 (RM 9101), in order to establish a full set of performance standards, measures and enforcement mechanisms that are adequate to ensure that widespread local competition can bring the benefits of open markets to residential and business customers, and that nascent local competition will not be extinguished once section 271 applications are granted. MCI WorldCom joins with petitioner in encouraging prompt action, so that the necessary rules can be adopted in advance of any grant of a section 271 application. The Commission must make clear that it emphasized the need for performance requirements in its prior orders for good reason, and that unless adequate performance measurements, standards, and remedies are in place -- whether by negotiation, state order, or Commission rule -- section 271 entry will be denied.

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Expedited Rulemaking to Develop a National Framework to Detect and Deter Backsliding to Ensure Continued Bell Operating Compliance with Section 271 of the Communications Act Once In-region InterLATA Relief Is Obtained	)	RM-9474

COMMENTS OF MCI WORLDCOM, INC.

MCI WorldCom, Inc. agrees with petitioner Allegiance Telecom, Inc. that the Commission should promptly establish rules focusing on comprehensive performance measures, objective performance standards, and effective enforcement mechanisms. To expedite that process, MCI WorldCom urges the Commission to supplement the record in its prior rulemaking on performance measures.[1] The purpose of such rules must be both to ensure that there will be no "backsliding" once a section 271 application is granted, and to encourage BOCs to fulfill their legal obligations to provide reasonable and nondiscriminatory service to CLECs, which will fully open the market and thereby enable section 271 applications to be granted in the first place.

---

[1] In re: Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance, Notice of Proposed Rulemaking, CC Docket No. 98-56, RM 9101 (April 17, 1998) (hereinafter "NPRM") (Commission suggested guidelines for performance measures, rather than a full set of minimum performance requirements). The Commission should now supplement the record in the NPRM to incorporate the experience of the last year, and to take into full account the impact of the Supreme Court's recent decision in AT&T v. Iowa Utilities Board, 1999 WL 24568 (US Jan. 25, 1999).

Recognizing that CLECs are entirely dependent on monopoly providers for interconnection, resale, and unbundled elements, Congress required that BOCs -- and other ILECs[2] -- provide access to all three means of entry on reasonable and nondiscriminatory terms.[3] These guarantees are hollow without appropriate standards and objective proof to demonstrate that the quality and timeliness of service BOCs provide to their captive CLEC customers are both reasonable and equal to the quality and timeliness of service the BOCs provide to themselves (including the BOCs' customers and affiliates).

The Commission's goal in establishing rules should be to further the fundamental purpose of the Telecommunications Act of 1996 (the "Act" or "1996 Act"), which is to ensure that local markets are fully opened to competition for the benefit of both residential and business customers. The benefits of competition -- lower prices, better quality, and more innovation -- will not be achieved in local markets without adequate performance measures, standards and remedies, as discussed below. The Commission should act as expeditiously as possible on these

---

[2]While the discussion of "backsliding" and the incentives and timing relating to section 271 authorization apply only to BOCs, the heart of the analysis herein, discussing the incentives of incumbents to protect their monopoly markets by discriminating against competitors, applies equally to all ILECs. Thus, as discussed in part II, below, the Commission should establish performance requirements applicable to all ILECs.

[3]Section 251(c)(3) of the Telecommunications Act of 1996 (codified throughout the Communications Act of 1934 in Title 47 U.S.C., to which all section numbers herein refer unless indicated otherwise) mandates that ILECs provide "nondiscriminatory access to network elements on an unbundled basis . . . on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." See also §§ 251(b)(1), 251(c)(2), and 251(c)(4).

Further, the 1996 Act requires that before gaining approval for in-region, long distance market entry, BOCs must show they are providing "nondiscriminatory access" to network elements; poles, ducts conduits and rights-of-way; 911 and E911 services; directory assistance services; operator call completion services; telephone numbers; databases and associated signaling necessary for call routing and completion; and services and information necessary for the CLEC to implement local dialing parity. Section 271(c)(2)(B).

issues in order to help give BOCs the guidance they continually request, prior to further section 271 applications.

I. PERFORMANCE MEASURES, STANDARDS AND REMEDIES ARE CRITICAL FOR COMPETITION, BOTH BEFORE AND AFTER SECTION 271 ENTRY

The issues raised by petitioner are not new, and the Commission and DOJ have made very clear pronouncements on the importance of performance measures, standards and self-executing remedies. It is now time for the Commission to take the next step toward implementing a minimum set of performance requirements. Such action will help fulfill Chairman Kennard's recent commitment to Congress that "[w]ith the stakes so high, when formerly monopolized markets are being opened to competition, it is essential that we [the Commission] do as much as we can to prevent anything that will retard the development of competition."[4]

The Commission emphasized in its first detailed section 271 order that "proper performance measures with which to compare BOC retail and wholesale performance, and to measure exclusively wholesale performance, are a necessary prerequisite to demonstrating compliance with the Commission's 'nondiscrimination' and 'meaningful opportunity to compete standards.'"[5] In addition, the Commission specifically emphasized the importance of

---

[4]State of Competition in the Telecommunications Industry Three Years After Enactment of the Telecommunications Act of 1996, Hearings Before the Subcommittee on Antitrust, Business Right and Competition, Senate Committee on the Judiciary, 106th Cong, February 25, 1999, Statement of FCC Chairman William Kennard (hereinafter "Feb. 25, 1999 Kennard Testimony") at 11 (discussing lowering entry barriers and ensuring efficient interconnection).

[5]In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan, Memorandum Opinion and Order, FCC 97-137, ¶ 204 (Aug. 19, 1997) (hereinafter "Michigan (continued...)

performance standards, id. ¶ 393, as well as self-executing enforcement mechanisms to "ensure compliance with the established performance standards," recognizing that "[t]he absence of such enforcement mechanisms could significantly delay the development of local exchange competition by forcing new entrants to engage in protracted and contentious legal proceedings to enforce their contractual and statutory rights to obtain necessary inputs from the incumbent." Id. ¶ 394. This emphasis has continued through to the most recent section 271 order, in which the Commission relied heavily on performance data and applauded requirements for performance standards.[6] Further, as Chairman Kennard testified before Congress,

> The Commission will consider whether the BOC has agreed to performance monitoring and whether there are appropriate enforcement mechanisms that are sufficient to ensure compliance with established performance standards.[7]

DOJ has been similarly explicit in publicly advising BOCs of the importance of performance requirements. In recent Congressional testimony, Assistant Attorney General Joel Klein of DOJ's Antitrust Division expressed the need for "a reliable means to measure the incumbent's wholesale performance, and an effective enforcement mechanism to ensure against

---

[5](...continued)
Section 271 Order") (citing In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in the State of Michigan, Evaluation of the U.S. Department of Justice, FCC 97-137, at 3 (June 25, 1997)). See also In the Applications of NYNEX Corp. Transferor, and Bell Atlantic Corp. Transferee, For Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries, Memorandum Opinion and Order, 12 F.C.C.R. 19985 (August 14, 1997) ("Merger Order") (requiring Bell Atlantic to prepare and file performance reports as a safeguard to protect against anticompetitive behavior following its merger with Nynex).

[6]In the Matter of Application of BellSouth Corporation, et al. for the Provision of In-Region, InterLATA Services in Louisiana, Memorandum Opinion and Order, FCC 98-121, ¶ 93 (Oct. 13, 1998) (hereinafter "Louisiana II Section 271 Order").

[7]The Telecommunications Act of 1996, Moving Toward Competition Under Section 271, Hearings Before the Subcommittee on Antitrust, Business Right and Competition, Committee on the Judiciary, 105th Cong., March 4, 1998, Statement of FCC Chairman William Kennard.

poor performance or 'backsliding' after section 271 approval."[8] Mr. Klein also emphasized the "considerable attention" that DOJ has given to developing a standard for assessing section 271 applications and ensuring local markets remain open after applications are approved, and expressed hope that collaborative processes will implement "the performance measures, the reporting requirements, the performance benchmarks, and the regulatory and contractual enforcement mechanisms that will be necessary to protect against such post-271 entry 'backsliding.'"[9] The Commission should now build on these well-recognized principles and embody them in a set of specific rules and guidelines that will ensure BOCs do not follow their natural incentives to discriminate against CLECs in order to maintain their monopoly position in the local market, but will instead ensure that local competition will flourish.

The Commission has ample authority to proceed. In addition to the statutory requirements that BOCs provide reasonable and nondiscriminatory access to unbundled elements, resale, and interconnection, which are set forth above, the Commission is charged with ensuring that BOC entry into the long-distance market is consistent with the public interest. The Commission and DOJ have already found that this standard requires mechanisms to ensure that

---

[8] The State of Competition in the Telecommunications Marketplace Three Years After Enactment of the Telecommunications Act of 1996, Hearings Before the Subcommittee on Antitrust, Business Right and Competition, Senate Committee on the Judiciary, 106th Cong., February 25, 1999, Statement of DOJ Assistant Attorney General Joel Klein (hereinafter "Feb. 25, 1999 Klein Testimony") at 12.

[9] Feb. 25, 1999 Klein Testimony at 15. Further, in its evaluation of BellSouth's first application for section 271 authority in Louisiana, DOJ emphasized that performance standards are critical to ensuring that BOCs do not engage in "backsliding" following section 271 entry. In the Matter of Application of BellSouth Corporation, et al. for the Provision of In-Region, InterLATA Services in Louisiana, Evaluation of the U.S. Department of Justice, FCC 97-231, at 31-33 (Dec. 10, 1997). DOJ concluded that because BellSouth had not agreed to protections against backsliding, it had not "fully and irreversibly opened [its market] to competition." Id. at 33.

local markets, once opened to competition, remain open.[10] It is all too easy for a BOC to degrade service to CLECs upon gaining section 271 entry, when CLECs are first establishing their reputation in the market, or to strategically time degraded service to match large-scale launches by CLECs in the years to follow. There is no serious dispute by any regulator about the BOCs' ability and incentive to do so, given the CLECs' dependence on the BOCs' facilities and service. The only issue, then, is what standards and remedies are sufficient to offset the BOCs' natural incentive to degrade service to their competitors in the local market. The answer to that question is vital to the Commission's public interest inquiry.

In addition, as petitioner points out, the Commission has ample authority under other sections of the Act to establish performance requirements, including sections 251(d) and 201(b), as well as sections 303(r) and 4(i). In particular, as petitioner emphasized, the Commission has a statutory obligation to establish a framework to ensure that BOCs comply with their section 271 obligations. Section 271(d)(6).

In light of the Supreme Court's recent decision affirming the Commission's broad jurisdiction to adopt rules interpreting and implementing the local competition provisions of the Act, the Commission should set forth a national framework, establishing a minimum set of rules that will permit local competition throughout the country, while leaving states free to adopt more stringent measures as appropriate to achieve local competition even more quickly.

---

[10] Michigan Section 271 Order ¶ 386 ("the Commission [may] not lift the restrictions imposed by the MFJ . . . until the Commission is satisfied . . . that the BOC has undertaken all actions necessary to assure that its local telecommunications market is, and will remain, open to competition."); In the Matter of Application of BellSouth Corporation, et al. for the Provision of In-Region, InterLATA Services in Louisiana, Evaluation of the U.S. Department of Justice, FCC 98-121, at 38, 41 (Aug. 19, 1998) (hereinafter "Louisiana II DOJ Evaluation").

Adoption of a basic set of nationwide performance requirements is vital, for many states have not adopted performance requirements at all, or have chosen to rely on an inadequate set of requirements. Commission requirements would have the benefit of providing nationwide coverage and uniformity, which will allow benchmarking comparisons to be made between BOCs, will provide BOCs more certainty and uniformity for their section 271 applications, and will provide both CLECs and regulators uniform measurements and reporting. Thus, MCI WorldCom strongly encourages the Commission to adopt a full set of minimum performance requirements as promptly as possible.

A. Adequate Performance Measures and Reporting Are Critical for Detecting Inadequate and Discriminatory Performance

The Commission must first establish what performance will be measured, how it will be measured, and how it will be reported to CLECs and regulators.[11] All other analyses of standards and remedies depend on these threshold determinations. Although easily overlooked, recent experience in New York both with section 271 proceedings and with the Merger Order has revealed how important this foundation is, beginning with definitions of performance metrics and agreed upon processes for measuring performance.

Resolve Definitions and Scope. As an initial step, acceptable documentation needs to be prepared that adequately lays out how the BOC will define each particular measurement or "metric" (e.g., start and stop times for each measurement) and the process used to measure that

[11]It is, of course, essential to distinguish between an BOC's promise to collect data and produce reports (e.g., a monthly summary of the average length of time to provision a loop), and a commitment to abide by particular performance standards or benchmarks, which actually require service to be provided at a specified level (e.g., loops requiring a premises visit must be provided within three business days; firm order commitments ("FOCs") must be received on an average of four hours or less). Both are essential to ensuring reasonable and nondiscriminatory performance.

metric. This detailed description must also include specific information regarding what performance data will be included and excluded from the BOC's reports. Satisfactory definitions and documentation are the essential first step to assure that performance measurement and reporting are conducted in a fair and unbiased manner that neither minimizes nor overstates the extent of inadequate or discriminatory service.

The documentation should be sufficiently clear and detailed that a third-party could take the raw data and duplicate the reports using the documentation as a guide. The importance of this initial step was demonstrated in New York, where Bell Atlantic created documentation of this nature only when KPMG Peat Marwick (the independent third party testing Bell Atlantic's New York operations support services ("OSS")) could not duplicate Bell Atlantic's performance reports. A review of the New York documentation revealed stark discrepancies between the way CLECs expected performance measurements would be defined and conducted and the way in which Bell Atlantic defined and conducted its measurements. For example, Bell Atlantic had originally failed to report or note that pre-ordering response time data would be excluded when problems with its sampling occurred. After discussions with CLECs and New York Public Service Commission staff, Bell Atlantic agreed to note in its reports when sampling problems occur, to avoid the appearance that all was well when Bell Atlantic simply failed to provide sufficient information.[12] Similarly in Texas, SBC sought to include network "timeouts" from the "average response time for OSS" measurement, and to exclude weekends and holidays from its measurement of "percent trunk blockage" even though customers need adequate service all the time.

---

[12]The New York third-party test also revealed many other problems, such as Bell Atlantic including CLEC maintenance data in its own retail maintenance results, thereby skewing the results.

These experiences illustrate the importance of carefully and explicitly defining any "exclusions" -- data that BOCs wish not to include in their performance measurements. Without a description of what a BOC views as an "aberration" warranting exclusion from its performance measurement data, or noting the times when such aberrations occur, regulators and CLECs are unable to determine if the BOC is properly measuring its performance. For example, documentation is needed so that CLECs can understand what data the BOC is measuring as part of its retail flow-through and CLEC flow-though performance metrics. How a BOC carries out measurements and what data is included or excluded in reports is critical, since the results can very easily be skewed in the BOC's favor by improper exclusions.

The experience in New York revealed striking differences between the CLECs' and Bell Atlantic's perceptions of how particular metrics would be defined, as well as the processes that would be followed. In one instance, the documentation revealed that Bell Atlantic was comparing CLEC Telephone Number Reservation response times to its own representatives' times and arbitrarily adding one additional second to its figures, which it called a "think second." After this misrepresentation was discovered, Bell Atlantic agreed to remove the "think second," but had there been no documentation, CLECs likely would never have found out about this padding.

Reporting must not be limited solely to the performance experienced with electronic interfaces so long as manual processes continue to be used. For example, if a BOC continues to use manual processes for certain orders, those measurements should not be excluded from its reports. CLECs are entitled to reasonable and nondiscriminatory service, regardless of the types of processes the BOC uses; indeed, the opportunity for discrimination is greatest in processes involving manual intervention. Further, it should be clear that performance requirements should cover not simply the interfaces, but all processes or measurement points needed to complete an order or other transaction. Responsibility for performance measurement and reporting should commence at the point the BOC receives a pre-order query, service order, or maintenance request, regardless of the method of transmission from the CLEC, and regardless of the type of service or product, including all forms of DSL and the provision of all types of collocation facilities to CLECs.[13]

Reports Must Be Understandable and Readily Accessible. BOC performance reports and supporting data should be filed on a monthly basis with both the Commission and the appropriate state commission in order to increase the likelihood of effective enforcement, and should be made available on a web site to allow CLECs to monitor the specific performance results compared to both parity and objective standards or benchmarks.[14] In addition,

[13]All BOC facilities used by CLECs to provide local services must be included in BOCs' ordering, provisioning, maintenance, and billing reporting metrics in order to achieve the parity required by the Act, regardless of whether those facilities are purchased out of interstate special access tariffs or UNE tariffs. Excluding special access orders from the performance metrics would allow discrimination to go unchecked. For example, MCI WorldCom has experienced problems when ordering links of customers to its fiber rings and switches from the BOCs' interstate special access tariffs, yet these troubles are not reflected in BOCs' performance monitoring reports. Due to unavailability of UNE combinations and lingering interface, UNE pricing, and maintenance issues, MCI WorldCom still relies on use of special access to serve many local customers. Since state performance reporting efforts focus only on orders made through interconnection agreements, MCI WorldCom is concerned that special access services are deteriorating as BOCs focus provisioning and maintenance efforts on service delivery methods that will show up in the performance data being required prior to section 271 approval.

[14]Reports that detail BOC performance for specific CLECs should be filed as proprietary so as not to compromise the confidentiality of certain sensitive performance information.

information should be provided to permit regulators and CLECs to review the data excluded from the measurements to determine if it was legitimately omitted.[15]

BOC performance reports should be provided in a clear and easy to use format, with labels indicating the units of measure, and any unclear notations explained in footnotes and in the documentation. Further, BOC reports should indicate any standards or benchmarks applicable to a particular measure, to make clear to any reviewer whether the BOC is meeting its obligations without having to research the applicable standard. Finally, the BOC internal measurement results should be placed side by side with the individual CLEC and aggregate CLEC numbers in order to reveal any lack of parity.

Disaggregation and Statistical Analysis Needed. In order to be meaningful, it is essential that BOC reporting occur at sufficiently disaggregated levels that enable CLECs and regulators to fairly compare a BOC's retail performance to its wholesale performance. Without such disaggregation, BOCs will be able to simply manipulate their performance reports by misleadingly grouping together different types of products, orders, and geographic areas. In addition, parity cannot be properly determined without an appropriate statistical methodology. The Local Competition Users Group's ("LCUG's") modified "z-test," which has been accepted by both BOC and CLEC participants in several state performance measurement proceedings, including New York, California and Texas, is the appropriate test for evaluating parity on a

---

[15]For example, if an order is excluded because a customer was not ready for delivery of that service, CLECs need to be able to determine whether the Customer Not Ready exclusions are actually due to instances caused by the BOC. For instance, MCI WorldCom might not be ready to receive a loop if no FOC was issued by the BOC or one was issued with a same-day due date. The Customer Not Ready exclusion should not apply when the BOC is at fault.

measurement-by-measurement basis.[16] MCI WorldCom encourages the establishment of a uniform nationwide methodology that will ensure conformity by all BOCs to a common methodology, so that parity criteria are not subjective.

Right to Audit. Finally, CLECs must have the right to audit (and/or request a third party to audit) the BOCs' underlying data and all processes bearing on the results reflected in the performance reports due to the indisputable incentives of BOCs to omit violations and generate results that show non-discrimination. Many ways exist for BOCs to manipulate data to make their performance look better for CLECs or worse for themselves, so as to appear in parity and in compliance with applicable standards and benchmarks. Auditing is a generally accepted condition of the vendor-client relationship, as well as the regulatory process.

B. Establishment of Objective Performance Standards Is Essential to Open Local Markets by Enabling CLECs to Dependably Serve Customers

Performance standards or benchmarks[17] require a particular level or quality of service to be provided to CLECs (such as installation of service within one business day), and are essential to ensure that competitors are provided consistent and satisfactory levels of performance. In a world where the BOC is the dominant or sole supplier of most elements, nothing other than

[16]Use of the modified z-test permits the results of different samples to be compared on a standard scale, detecting differences in means and variance between BOC and CLEC results. Statistical procedures recognize that there is measurement variability (e.g., more CLEC orders might have been placed during a storm or high workload period or be for services involving shorter intervals), and assist in translating the results data into useful decision-making information. A statistical approach allows for measurement variability while controlling the risk of drawing an inappropriate conclusion.

[17]The terms "standards" and "benchmarks" are used interchangeably in these comments.

standards or benchmarks can ensure that new entrants receive a meaningful opportunity to compete.[18]

Absent standards governing when it will receive "raw materials" from its sole supplier, MCI WorldCom cannot plan its internal operations or advise its own customers and potential customers when they can expect to receive service. It is not possible to compete on equal terms without such commitments from MCI WorldCom's monopoly vendor. Further, while parity standards fluctuate with the BOCs' reported performance for their end users, objective performance standards will ensure that CLECs receive a consistent and adequate level of service -- a prerequisite to receiving service on the "reasonable" terms mandated by the Act.

The need for performance standards is even more significant when section 271 is considered. Once a BOC obtains authority to provide in-region long distance service, the incentive to cooperate with competing local carriers greatly diminishes.

Extent of Standards. Much attention has been focused on establishing objective performance standards only where no retail analogue exists, in the apparent understanding that the Act only requires nondiscrimination by the BOC, which is shown through parity. In fact, of course, the Act requires BOC service to be "just" and "reasonable" as well, which protect CLECs from the constant variability that would result from reliance on BOCs' self-reported parity alone.

---

[18]The fact that performance reporting alone is insufficient to satisfy the Act is demonstrated by various BOCs conceding the need for performance standards. Bell Atlantic admits that "[w]here there are processes or services for CLECs that have no retail analogue, the parties should negotiate a reasonable standard that provides the CLEC with a 'meaningful opportunity to compete,' not try to invent non-existent functions and measures." Comments of Bell Atlantic, NPRM, at 8 (filed June 1, 1998). Similarly, SBC concedes the need for objective performance standards for functions that have no retail analogue. Comments of SBC, NPRM, at 31. Although enforceable performance standards are needed for every function CLECs depend on a BOC to deliver, not simply for wholesale functions that have no retail analogue, SBC's and Bell Atlantic's concessions narrow the scope of debate.

Objective performance standards quantify the time within which it is "reasonable" to provide access to a given network element, and the reasonableness of the quality of such access. Thus, the Commission should establish a standard that BOCs must meet for each measurement, regardless of whether a retail analogue exists.

The standard need not require any higher level of service than what a BOC generally provides its own customers. But, in order for CLECs to have a "meaningful opportunity to compete," they have to be just as able as the BOC to tell customers what to expect in terms of service delivery. MCI WorldCom cannot commit an interval to a customer or enter into a service level agreement if parity for a key input is seven days one month, twenty the next and five the next. Quite simply, in the absence of standards, the ability of potential local competitors, such as MCI WorldCom, to efficiently provide local service will be significantly impaired.

Build on State Efforts. MCI WorldCom agrees with petitioner that the states of New York and Texas have done important groundbreaking work in their efforts to open local markets to competition, and in addressing many issues relating to performance requirements. It is largely for those reasons that MCI WorldCom has launched local residential service throughout Bell Atlantic's region in New York, and is preparing to launch residential service in Texas this year. MCI WorldCom encourages this Commission to build on the efforts in those states and adopt the approaches that have been successful there, while continuing to strive for a level that will maximize local competition throughout the country. Nevertheless, even in New York and Texas, problems in performance requirements remain. Leaving aside the improvements needed in some areas of reporting and standards, neither state has adopted an adequate remedy mechanism to prevent backsliding. These and other open issues (e.g., OSS availability and testing, access to

UNE combinations at cost-based prices, intellectual property barriers, and DSL issues) will determine the degree and viability of MCI WorldCom's entry.

The vast majority of other states have made even less progress, with little state progress toward the adequate development of objective performance standards. Given the inability of the vast majority states to develop adequate performance standards by this point, it is inconceivable that every state will devote sufficient resources to developing standards. Accordingly, the Commission should adopt minimum performance standards as rules, which individual states could exceed as appropriate or desirable for local conditions.

Periodic Adjustment. There is a need for periodic reevaluation of all performance requirements, and the need to make adjustments as experience is gained is especially great when dealing with standards and benchmarks. Competition and technology in the local market is evolving, so it is important for the Commission to establish a process by which it can consider and adopt changes to any list of measurements and standards that is developed, in order to keep pace with the new and revised functions BOCs provide to CLECs.

Moreover, over time, with additional experience and new technologies, carrier-to-carrier performance should improve dramatically, because the Act's prohibition against discrimination requires BOC performance to CLECs to continually improve along with each BOC's own internal performance. For example, if a standard of three days for delivery of a service to a CLEC customer had been set, but the BOC is now delivering an analogous service to its own customers or affiliates in one day, parity does not exist and competition would be harmed. In fact, BOCs that fought MCI WorldCom's proposed standards in the first contract arbitration rounds as too strict are now exceeding those standards. FOCs are now provided in two hours for resale even though the BOCs strenuously objected to a 48 hour interval. Collocation request response intervals have fallen from 30 to 10 days and provisioning for physical collocations from 120 to 90 days or lower. Some BOCs that had balked at having to provide unbundled loops in five days are now providing them in two.

The Commission should adopt standards that provide CLECs with a meaningful opportunity to compete and to provide customers more certainty of performance. The Commission should also adopt a mechanism to revisit the standards adopted, as more stringent standards may be needed over time.

C. Self-Executing Remedies and Other Penalties Are Necessary to Deter Anticompetitive Behavior by Incumbents and Promote Competition

The Commission should require self-executing remedies and establish an expedited complaint procedure in order to give BOCs an incentive to consistently meet their performance standards and avoid other anticompetitive conduct. Such action is vital to encourage local competition and prevent backsliding, and would address the Commission's well-founded concern that "without enforcement mechanisms, reporting requirements are 'meaningless.'"[19]

---

[19]In re: NYNEX Corp. and Bell Atlantic Corp. for Consent to Transfer Control of NYNEX Corp. and its Subsidiaries, FCC 97-286, ¶ 208 (Aug. 14, 1997) (citing ex parte submission of TCG Corp.). DOJ also stressed that appropriate performance standards should be backed by specific enforcement mechanisms, established in advance of section 271 authorization. Louisiana II DOJ Evaluation at 38-39.

Self-Executing Remedies. The Commission should establish self-executing remedies[20] as the basic mechanism to enforce performance standards and protect CLECs from discrimination. Without adequate self-executing remedies, BOCs may decide to discriminate against CLECs in an attempt to tarnish their reputation in the local market or drive them out of business altogether, while using lengthy dispute resolution procedures to delay or avoid the consequences of such discrimination.[21] Lawsuits and complaint proceedings can take months or years before a final conclusion is reached.[22] Even months is too long to wait for resolution by a

---

[20]"Self-executing" remedies are applied in an automatic fashion as violations occur without the need for commission or judicial action. A number of states, including Texas and California, are establishing self-executing remedies in addition to contract remedies. However, reliance on state or contract solutions is not sufficient. Even in states where MCI WorldCom has arbitrated and obtained the inclusion of credits, they only apply to a small number of standards contained in the contract. These limited credits provisions for a handful of standards are insufficient in light of the dozens of services and functions for which CLECs depend on the BOCs, the vast majority of which are not governed by contractual standards and remedies.

[21]A few examples illustrate the importance of having a prompt mechanism of self-executing remedies. In Minnesota, MCI WorldCom's subsidiary, MCImetro, has been embroiled in state complaint proceedings over discrimination and performance breaches of interconnection contracts with little prompt or effective relief. About ten months after considering MCImetro's complaint against U S West ("USW"), the Minnesota Public Utilities Commission ordered USW to negotiate performance guarantees/credits with MCImetro. USW, however, has only offered to negotiate a process for resolving future disputes. Now MCImetro is back before the Minnesota commission trying to get the commission's original directive enforced.

Similarly, in Iowa MCImetro had to seek redress from the Iowa Utilities Board in an effort to obtain from USW information needed for local market entry. The Board ordered USW to pay fines of $10,000 per day for 11 days, plus $1,500 per day for an additional 64 days for violation of its contract with MCImetro (as well as additional fines with respect to its contract with AT&T), and granted MCImetro's request for electronic copies and regular updates of that information. Despite the fines, the Board's order, and MCImetro's requests before and since that order, USW has not provided electronic access or updates to the information. Thus, even fines of over $200,000 were an insufficient incentive for USW to comply with its interconnection contract with MCImetro or the Board's orders.

[22]<u>See</u>, <u>e.g.</u>, <u>MCImetro Access Transmission Services, Inc. v. Bell Atlantic Corp.</u>, File No. E-98-12, filed December 19, 1997 (pricing complaint); <u>MCI Telecommunications Corp. and MCImetro Access Transmissions Services, Inc. v. Bell Atlantic Corp. et al.</u>, File No. E-98-32, filed March 17, 1998 (performance standards complaint). Both of these complaints are still pending.

new entrant attempting to compete against an entrenched incumbent, and the costs of litigation can be prohibitive. A new entrant could be out of business with a sullied reputation by the time of a final resolution. From the BOC's perspective, however, the possibility of an uncertain monetary penalty months after a CLEC has lost its customers and its good reputation would be a small price to pay for defending its monopoly market position.

Indeed, the Commission has recognized that the absence of "enforcement mechanisms that are automatically triggered by noncompliance with the applicable performance standard without resort to lengthy regulatory or judicial intervention . . . could significantly delay the development of local exchange competition by forcing new entrants to engage in protracted and contentious legal proceedings to enforce their contractual and statutory rights to obtain necessary inputs from the incumbent."[23]

The Commission must address both the amount of the self-executing remedies and the means by which they are calculated. Because a BOC has a large incentive to discriminate to protect its monopoly market, the level must be of sufficient financial magnitude to deter discrimination and make compliance the rational economic choice for a BOC. A modest level of payments would result only in the BOC considering the system of remedies merely to be a cost of doing business. MCI WorldCom also urges a system of multiplying the penalty to reflect both the magnitude of the deviation from the required standard (e.g., 50 percent on time compared to 85% on time), the duration of the period in which substandard or nonparity service is received, and the number of violations.[24]

---

[23]Louisiana II Section 271 Order at ¶ 364.

[24]The remedy amounts need to grow with CLEC order volumes affected by inferior

(continued...)

In short, establishment of self-executing remedies that apply promptly and automatically may deter BOCs from implementing anticompetitive strategies. But even when deterrence fails and a remedy is required, the automatic nature of self-executing remedies will spare CLECs (as well as BOCs) the cost of unnecessary litigation and delay, and will help reduce administrative burdens on the Commission.

Accelerated Complaint Process. As useful as proper self-executing remedies should be to encourage BOCs to comply with their statutory obligations, a formal, expedited complaint process is also necessary for situations that are not fully remedied by the self-executing procedures. MCI WorldCom agrees with petitioner that an accelerated complaint process should be established, but urges that the Commission include failure to comply with performance standards and other section 271 violations within its existing Accelerated Docket (the so-called "rocket docket"), rather than establishing a new process.

Use of the rocket docket for these competitive issues fits within both the Commission's recognition of the importance of prompt resolution of disputes in establishing the Accelerated Docket,[25] and Chairman Kennard's recent explanation to Congress of its role in local competition:

---

[24](...continued)
performance. Yet the size of the remedy should not solely be tied to future order volumes, as in New York where the remedy is merely a discount on future orders. Such a system provides a perverse incentive where the BOC benefits from providing service so poor that CLECs place fewer orders after suffering harm, and thus the BOC has to give fewer discounts the worse its service becomes.

[25]In the Matter of Implementation of the Telecommunications Act of 1996 Amendment of Rules Governing Procedures to Be Followed When Formal Complaints are Filed Against Common Carriers, Second Report and Order, FCC 96-238, ¶¶ 3, 10 (July 14, 1998) (hereinafter "Report and Order") (prompt resolution of disputes stimulates competition by "affording competitive market participants some measure of the certainty that is necessary effectively to map out their business strategies and to stage their capital investment in order to achieve their corporate goals.").

> To keep markets open and the competitive momentum going, the FCC will act as the liaison between the incumbent LECs and the CLECs to minimize disputes and avoid lengthy proceedings and litigation. And where the FCC's intervention cannot quickly resolve interconnection problems informally, we are using our "rocket docket" to end these disagreements quickly, and to keep the market functioning smoothly.[26]

Prompt resolution of complaints relating to section 271 and BOC performance is important, for as the Commission noted, even "minor" delays or problems in the local competitive environment can present "a serious and damaging business impediment to competitive market entrants."[27]

The accelerated complaint process should be available to enforce non-compliance with self-executing remedies, and to provide redress to CLECs which are harmed in ways not covered by the self-executing remedies, or which are harmed to an extent greater than the recompense obtained through the self-executing mechanism. In addition, the rocket docket will be important if a process for recalibrating performance standards and self-executing remedies is not regularly applied (as urged above), in order to allow CLECs to obtain the benefits of enhanced technology and improved efficiencies enjoyed by the BOCs.

Finally, it may be necessary to suspend or revoke a BOC's section 271 authorization through the complaint process for improper and anticompetitive actions, including ongoing failure to comply with performance standards. The 1996 Act specifically contemplates either "suspension or revocation" of section 271 authority, rather than merely suspension as discussed by petitioner.[28] Section 271(d)(6)(A)(iii). The option of total revocation of section 271 authority

---

[26]Feb. 25, 1999 Kennard Testimony at 15.

[27]Report and Order, ¶ 3.

[28]While it is hoped that there would be no need to impose such penalties, suspension, or limiting the ability of a BOC to sign up new long distance customers, may have little effect on a BOC that has achieved its market share targets, after which time it might be willing to risk suspension at that (continued...)

is important, as it may be the only penalty serious enough to deter anticompetitive behavior and ensure BOC compliance with the performance standards that are critical to a competitive local marketplace.[29]

II. PERFORMANCE REQUIREMENTS SHOULD APPLY TO ALL ILECS, NOT JUST SECTION 271 APPLICANTS

Allegiance is correct in noting the importance of section 271 proceedings and the urgency of the performance requirement issues in light of section 271 applications expected this year. However, most of the suggestions and enforcement proposals made by Allegiance need not be limited to section 271 and should also be applied to encourage ILEC compliance with section 251. The Act has absolute requirements that all ILECs must open their markets to competition, which apply whether or not section 271 applies or is of interest to a particular company. Such a broad approach is not only the law, but is logical. The goal is to open local markets to competition as broadly and quickly as possible, not just where BOCs are seeking section 271 authority.

CONCLUSION

For the foregoing reasons, the Commission should promptly establish rules providing comprehensive performance measures, objective performance standards, and effective enforcement mechanisms in order to discourage ILEC discrimination and inadequate service, and

[28](...continued)
level of market penetration if revocation of section 271 authority were not a possibility.

[29]While revocation of section 271 authority would inconvenience the customers affected to some degree, such harm could be minimized by mandating that the BOC finance and conduct balloting of its existing in-region long distance customers, so as to make the transition cost-free to customers and as easy as possible.

to encourage the development of irreversible local competition for the benefit of residential and business customers who will receive the significant benefits that accompany a truly competitive marketplace.

Respectfully submitted,

Keith L. Seat
Karen T. Reidy
MCI WORLDCOM, INC.
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 872-1600

Jerome L. Epstein
JENNER & BLOCK
601 13th Street, N.W.
Washington, D.C. 20005
(202) 639-6000

March 8, 1999

CERTIFICATE OF SERVICE

I, Keith L. Seat, hereby certify that I have on this 8th day of March, 1999, caused a true copy of the foregoing "Comments of MCI WorldCom, Inc." to be served upon the parties on the attached list by hand, except where noted by first class mail, postage prepaid.

Keith Seat

Keith L. Seat

SERVICE LIST

Federal Communications Commission	Magalie R. Salas Office of the Secretary Federal Communications Commission The Portals 445 Twelfth Street, SW Washington, DC 20554
U.S. Department of Justice	Donald J. Russell (via First Class Mail) David F. Smutny Antitrust Division U.S. Department of Justice 1401 H Street, NW, Suite 8000 Washington, DC 20530
and	Joel I. Klein (via First Class Mail) Assistant Attorney General Antitrust Division U.S. Department of Justice 950 Pennsylvania Ave., NW Washington, DC 20530-0001
ITS	ITS 1231 20th Street, NW Washington, DC 20036
Allegiance Telecom, Inc.	Robert W. McCausland (via First Class Mail) Vice President Regulatory and Interconnection Allegiance Telecom, Inc. 1950 Stemmons Freeway, Suite 3026 Dallas, TX 75207-3118